United Nations CMW/C/SR.345

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Distr.: General
12 April 2017

Original: English

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
Twenty-sixth session

Summary record (partial)* of the 345th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 4 April 2017, at 3 p.m.

Chair: Mr. Brillantes

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* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 3.30 p.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Examination of the implementation of the Convention by Jamaica in the absence of a report (CMW/C/JAM/QPR/1)

1. *At the invitation of the Chair, the delegation of Jamaica took places at the Committee table.*

2. **Ms. Gordon** (Jamaica) said that the protection of the human rights of all Jamaicans had been enshrined in the Jamaican Constitution since 1962. That protection had been further enhanced by the adoption in 2011 of the Charter of Fundamental Rights and Freedoms. Jamaica was a signatory to a number of treaties and conventions that set out guiding principles on migration. In addition to the Convention on the Protection of All Migrant Workers and Members of Their Families, they included such instruments as the International Covenant on Economic, Social and Cultural Rights and the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97).

3. Jamaica had a long history of labour migration as a country of origin, transit and destination. Owing to a lack of local opportunities, Jamaican workers emigrated in search of work to such countries as Cuba, Panama, the United States of America, Canada, and the United Kingdom of Great Britain and Northern Ireland, while workers from other countries were recruited to fill gaps in the Jamaican labour market, particularly in the areas of nursing and teaching.

4. The legislative framework that formed the basis of the labour migration policy of Jamaica included nine main statutes: the Foreign Recruiting Act of 1875, the Recruiting of Workers Act of 1940, the Deportation (Commonwealth Citizens) Act of 1942, the Immigration Restriction (Commonwealth Citizens) Act of 1945, the Aliens Act of 1946, the Employment Agencies Regulation Act of 1957, the Caribbean Community (Free Movement of Skilled Persons) Act of 1997, the Foreign Nationals and Commonwealth Citizens (Employment) Act of 1964 and the Trafficking in Persons (Prevention, Suppression and Punishment) Act of 2007.

5. Six ministries and agencies had primary responsibility for matters relating to migration. They were the Ministry of National Security, including the Jamaica Constabulary Force; the Ministry of Justice; the Ministry of Labour and Social Security; the Ministry of Foreign Affairs and Foreign Trade; and the Passport, Immigration and Citizenship Agency. The Ministry of Labour and Social Security was mandated to protect the rights of Jamaican workers at home and overseas, and to inform workers and employers of their rights and duties under Jamaican labour legislation. It also issued work permits to foreign workers, managed the circular migration of Jamaican workers for temporary employment under the Jamaican Government's Overseas Employment Programme and licensed, regulated and monitored private employment agencies that recruited workers for short-term employment, both in Jamaica and overseas.

6. The Ministry of Foreign Affairs and Foreign Trade offered consular support to Jamaican nationals living abroad and, together with the Ministry of Labour and Social Security, managed the Jamaican Liaison Service, which had offices in Canada and the United States and provided welfare and protection services to Jamaican workers participating in the Overseas Employment Programme. The responsibilities of the Service included monitoring the employment situation of Jamaican migrant workers, helping them to secure proper housing and ensuring that they had adequate health care and coverage for occupational accidents or illnesses.

7. The Overseas Employment Programme had contributed to Jamaica's social and economic development for over 60 years, alleviating high unemployment, particularly in rural areas, and providing a stable source of income to thousands of families. Through the Programme, which had benefited 14,844 individuals in 2015 and 2016, Jamaican workers

had been able to find seasonal or temporary employment in the agriculture and hospitality sectors in Canada and the United States.

8. The conditions under which migrants were admitted to, or deported from, Jamaica were governed by the Immigration Restriction (Commonwealth Citizens) Act, the Deportation (Commonwealth Citizens) Act and the Aliens Act. Migrant workers who wished to work in Jamaica were required to obtain a work permit or a work permit exemption before entering the country. Under the Foreign Nationals and Commonwealth Citizens (Employment) Act, prospective employers in Jamaica were required to demonstrate that they were unable to find workers with the appropriate skills locally and to ensure that local workers shadowed foreign migrants as a way of facilitating the transfer of knowledge. In 2015 and 2016, the Government had issued 4,545 work permits, 3,806 of which had been allocated to persons in the "professionals, senior officials and technicians" occupational category. During that period, the largest number of permits (1,810) had been issued to workers from Latin America.

9. The activities of foreign recruitment agencies were monitored under the Foreign Recruiting Act, which empowered the Government to prohibit or limit the recruitment of Jamaican nationals for employment overseas. Employment agencies were monitored under the Employment Agencies Regulation Act, the aim of which was to prevent the exploitation of jobseekers. Under that Act, the Ministry of Labour and Social Security issued licences to eligible agencies, monitored the latter's activities for compliance with regulations, investigated complaints against such agencies and closed down those that were operating illegally.

10. Jamaica was a member State of the Caribbean Community (CARICOM), which had been established in 1973 by the Treaty of Chaguaramas. Nationals of a CARICOM country who qualified under the Caribbean Community (Free Movement of Skilled Persons) Act were exempt from the requirement to obtain a work permit in order to work in other CARICOM member States and could move freely to those States and enjoy the same rights and privileges as their citizens. CARICOM nationals who fell into any of the approved occupational categories could apply for a document known as a "certificate of recognition of CARICOM skills qualification".

11. The Recruiting of Workers Act protected workers who were recruited in Jamaica for employment at home and overseas by stipulating the obligations of recruiters, including provisions governing the repatriation of a recruited worker, where necessary. Under the Caribbean Community (Free Movement of Skilled Persons) Act, pension contributions could be aggregated and benefits provided to eligible persons from a Caribbean Community member State. The Ministry of Labour and Social Security was responsible for coordinating activities to ensure that the objectives of CARICOM Social Security Reciprocal Agreements, which had been concluded with Canada and the United Kingdom, were met.

12. Participants in the Seasonal Agricultural Workers Programme in Canada made weekly contributions to the Jamaican National Insurance Scheme through withholdings from their salaries. Efforts were being made to reinstate a similar arrangement for seasonal agricultural workers travelling to the United States that had been discontinued in 2010. The families in Jamaica of workers participating in short-term overseas employment programmes were assisted by the Ministry of Labour and Social Security. Social workers conducted routine visits to the home of migrant workers' families in order to assess their living conditions and, where necessary, provide counselling, guidance and information. The social workers also ensured that migrant workers' children attended school, received financial, medical and emotional support, and, where appropriate, were referred to social and economic support programmes.

13. Jamaica was a signatory to several human rights instruments concerned with the prevention of trafficking in persons. In 2011, it had also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It had also adopted and updated anti-trafficking legislation, including the Trafficking in Persons (Prevention, Suppression and Punishment) Act. As a sign of its commitment to eliminating human trafficking, the Government had set up a National Task Force Against

Trafficking in Persons, which was responsible for coordinating anti-trafficking programmes. The Task Force, which was made up of representatives of a wide range of government agencies, was working closely with other agencies to prepare a national strategic plan, develop a high school curricular module on human trafficking and formulate an anti-trafficking policy.

14. **Mr. Ceriani Cernadas** (Country Rapporteur) said that the constructive dialogue between the Committee and the delegation from the State party would have benefited greatly from the submission of the country's initial report. In view of the fact that the State party's legislation governing migration and the protection of migrant workers had been adopted many years previously and that the nature of migration had changed considerably in the intervening period, he asked what steps the State party was taking to harmonize its legislation with the Convention and the other treaties relating to the rights of migrant workers that it had ratified.

15. **Ms. Dzumhur** said that she wished to know whether the Government would consider making the declarations provided for in articles 76 and 77 of the Convention. She asked whether a system was in place for gathering data on migrant workers that would facilitate the preparation of strategic plans and measures relating to migration; whether an independent monitoring system for the Convention or a national human rights institution had been established; and what channels the Government used to communicate with citizens and independent bodies.

16. **Mr. Ceriani Cernadas** asked what steps were being taken to create a comprehensive policy that addressed all the interconnected issues covered by the Convention.

17. **Ms. Dicko**, noting that six different ministries and agencies were responsible for policy concerning migration, said that she would welcome information on whether a framework was in place to coordinate all the various policies that they formulated. She asked whether, and how, public servants, judicial personnel and other persons working in areas related to migration had been informed of the State party's ratification of the Convention and the rights enshrined in it. Were those migrant workers who were protected by the Convention aware of its existence and of the rights that it granted them?

18. **Mr. Kariyawasam** said that he wished to know whether, and in what ways, civil society organizations contributed to the formulation and implementation of policy on migration and the dissemination of the Convention to the general public. He asked whether the implementation of new policies on migration in the United States would adversely affect Jamaican migrant workers and whether the Government was preparing to address any problems that might arise in that regard.

19. **Ms. Ladjel** said that she would like to know why, under the Immigration Restriction (Commonwealth Citizens) Act and the Aliens Act, disability was included among the criteria used to determine whether an individual could enter and remain in Jamaica. Were distinctions drawn between different types of disability, and were those criteria applied to children with disabilities who were migrating to Jamaica with their parents?

20. **Mr. Ceriani Cernadas** said that he would welcome further information on migrants who had been forced to leave the State party because they had been subjected to discrimination on the basis of their sexual orientation or gender identity. He asked whether migrant workers, both Jamaican nationals employed overseas and foreign nationals working in Jamaica, had access to justice and were able to submit complaints and obtain reparation if their rights were violated.

21. **Mr. Ünver** said that he wished to know what steps were being taken to combat racism against foreign migrant workers in Jamaica and Jamaican nationals working overseas. He asked whether the children of migrant workers in Jamaica were protected against discrimination and afforded equal access to education.

22. **Mr. Ceriani Cernadas**, noting that migrants appeared to be routinely detained under section 9 of the Aliens Act, said that he would welcome further qualitative and quantitative information on the places, conditions and periods of such detention; the procedures followed when migrant workers were detained; and the extent to which they

could exercise their right to access justice and challenge detention orders. He would also welcome information on situations in which migrant workers had been expelled, the reasons for those expulsions, the expulsion procedures followed and the safeguards that were made available to individuals faced with expulsion. Specific information should be provided on the procedures that had been employed, in recent years, to expel Haitian nationals. He requested further information on the consular support mechanisms that had been established to protect the rights of Jamaican migrant workers abroad who faced the possibility of being detained or expelled or to inform such workers of their labour rights.

23. **Mr. El-Borai** said that he wished to know whether, in accordance with articles 45, 46 and 47 of the Convention, migrant workers in Jamaica enjoyed working conditions and labour rights that were no less favourable than those afforded to Jamaican nationals. In view of the fact that the State party had ratified the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), he asked whether migrant workers in Jamaica enjoyed trade union rights. Lastly, he asked whether such workers enjoyed the right to social security.

24. **Ms. Landázuri de Mora** said that she would welcome further information on the procedure for registering the nationality of children born in Jamaica to documented or undocumented migrant workers.

25. **Ms. Castellanos Delgado** (Country Rapporteur) said that she wished to know whether migrants with irregular immigration status in Jamaica were removed immediately or were allowed to remain in the country and seek employment. She requested statistical information on the number of such migrants in Jamaica and their countries of origin. Lastly, she asked whether the children of undocumented migrant workers had the right to receive an education.

The meeting was suspended at 4.20 p.m. and resumed at 4.55 p.m.

26. **Ms. Gordon** (Jamaica) said that the Government had traditionally emphasized the protection of workers' rights, and its labour laws were quite sophisticated in many respects. Before becoming a party to any international treaty, all relevant legislation was reviewed to determine whether it needed to be amended or whether new legislation was required. The Ministry of Foreign Affairs and Foreign Trade served as a focal point for the interministerial committee on human rights, which oversaw the implementation of the human rights obligations undertaken by Jamaica, including those related to migration.

27. A number of efforts had been made to improve the protection of all workers and to ensure that deficiencies in national legislation were identified and addressed. Policies had been formulated to deal with workplace discrimination faced by women and other vulnerable groups, including persons with disabilities and persons living with HIV/AIDS. To that end, the National Workplace Policy on HIV and AIDS and the life-threatening illnesses policy had been established. The Disabilities Act of 2014, which had been adopted but had not yet entered into force, was aimed at ensuring that the interests and rights of persons with disabilities were promoted, protected and enhanced.

28. The Government was not opposed to making the declaration provided for in article 77 of the Convention, and information regarding the declaration provided for in article 76 would be transmitted to the Committee at a later date. A national human rights institution would be established as soon as legislation had been enacted to expand the powers of the Office of the Public Defender. The absence of a national human rights institution did not signify that there was inadequate protection for migrant workers in Jamaica.

29. Work had been completed on a draft national policy and plan of action on international migration and development, which was aimed at promoting a better common understanding of the linkages between the two, particularly within the context of globalization, and the need to maximize the benefits of international migration. The policy emphasized the importance of implementing measures to safeguard the rights of migrants and identified specific actions to promote the increased involvement of Jamaican migrants in international development. Existing pre-departure orientation programmes in Jamaica had been strengthened, and reintegration exercises were conducted at the end of overseas work programmes. The Ministry of Labour and Social Security had also increased

awareness among migrant workers and their families of the potential for remittances to contribute to savings and investment.

30. The promotion of regional cooperation among CARICOM member States was critical to addressing migration-related issues. The Foreign Nationals and Commonwealth Citizens (Employment) Act had been updated, as had the Caribbean Community (Free Movement of Skilled Persons) Act, which had been amended to cover all categories of skilled workers who were eligible to seek work in Jamaica. Citizens of CARICOM countries did not need a work permit in order to work in Jamaica and could, for example, exercise the right to establish a business and enjoy the free movement of capital in the State party. Recognized skilled workers who were nationals of a CARICOM country were allowed to remain in Jamaica indefinitely, whereas all other nationals of such countries were authorized to stay for a maximum of six months.

31. All services pertaining to labour migration were provided to all Jamaican citizens and foreign migrants in Jamaica without distinction and irrespective of sexual orientation. Jamaican laws protecting workers against non-discrimination, including racism, were broad and covered all employees of all nationalities. Labour officers of the Ministry of Labour and Social Security were responsible for visiting workplaces to ensure proper observance of labour laws. In the event of a breach, labour officers could intervene on behalf of the workers, advise them to take legal action or help them to obtain redress when an employer failed to take the required remedial action.

32. In order to inform workers of the available measures for remedying a violation of their rights, the Government had issued guidelines and bulletins through the Jamaica Information Service, the printed media and the radio. All workers were encouraged to file complaints with the Ministry when their rights were infringed, including in cases relating to, inter alia, remuneration, conditions of work or an employer's failure to provide notice prior to the termination of an employment contract.

33. Through the Ministry of Foreign Affairs and Foreign Trade, Jamaican consular staff provided support to Jamaican nationals working overseas, as well as assistance in the event of emergencies, such as natural disasters. When a Jamaican migrant worker was arrested or detained in another country, the staff of Jamaican overseas missions protected the worker's welfare by notifying his or her next of kin, conducting a visit to the place of detention and providing the worker with information about available legal services. Jamaican migrant workers had not often been subject to deportation from the countries in which they worked, although some Jamaican nationals who had served prison sentences overseas had faced deportation.

34. Under the joint administration of the Ministry of Labour and Social Security and the Ministry of Foreign Affairs and Foreign Trade, the Jamaican Liaison Service with offices in Canada and the United States provided welfare services to Jamaican migrant workers. The Service negotiated terms and conditions of employment, provided advice for prospective employers, maintained dialogue with workers' associations and advocacy groups, handled disputes between workers and employers, and provided workers with guidance before and after their arrival in the destination country. The Service's staff scheduled visits to companies in order to maintain good relations between employers and workers and conducted investigations into reports of violations of workers' rights. In addition, the respective departments of labour of Canada and the United States could conduct integrity audits to ensure compliance with the provisions of employment contracts issued in their countries, including those of migrant workers.

35. **Ms. Dzumhur** said that Governments should prepare their citizens for work abroad by providing them with information about migration destination countries. It would be useful to have further information about pre-departure training in Jamaica, including which body was responsible for organizing it, how it was funded and what kind of information it provided.

36. **Mr. Ceriani Cernadas** said that he would appreciate further information on the initiatives that had been introduced to enable Jamaican migrant workers to vote in Jamaican elections from overseas and the voting procedure used. He asked whether Jamaican migrant workers were eligible to vote in all Jamaican elections.

37. **Ms. Castellanos Delgado** said that migrant workers' remittances to their home countries bolstered their national economies. In some countries, the national government retained a portion of remittances or instituted programmes to use those remittances to help local communities. As most Jamaican migrant workers migrated alone, she asked whether any programmes had been established in order to assist their families who stayed behind in Jamaica or to help those families make optimum use of the remittances they received. It would also be useful to know whether migrant workers incurred costs when sending remittances to Jamaica.

38. **Ms. Ladjel** requested further information on the National Action Plan to Eliminate Child Labour and asked whether the Plan provided general protection for children from such social ills as school dropout, abandonment, ill-treatment and abuse. It would also be helpful to know whether the Plan was accompanied by a normative framework or whether a specific law on child protection had been adopted in the State party.

39. **Ms. Dicko** said that recruitment agencies played a key role in implementing policies relating to migrant workers. It would be helpful to have further details on the organizational structure of recruitment agencies, the mechanism used for their accreditation and their role in implementing the Convention. She asked whether employment agreements were concluded between Jamaica and migrant workers' countries of origin or between recruitment agencies and prospective employers.

40. **Mr. Ceriani Cernadas** said that he wished to have further information on the specific programmes and measures that had been adopted in order to facilitate the reintegration of returning Jamaican migrant workers. He asked whether there was any dialogue or cooperation between State bodies and civil society organizations, such as the National Organization of Deported Migrants, in order to combat the social stigmatization that negatively affected some returning Jamaicans and their prospects for reintegration.

41. **Ms. Castellanos Delgado** said that undocumented migrants contributed greatly to the economies of their host countries and often performed jobs that nationals of those countries found undesirable. She asked whether the State party had set up mechanisms to protect such migrants in its territory and requested information about the nation's deportation regulations.

42. **Mr. Tall** said that the Committee had been informed about a number of cases of human trafficking in Jamaica, which was a source, transit and destination country for victims of sexual trafficking and forced labour. As the State party had previously adopted an action plan to combat trafficking in persons, it would be helpful to know what the outcome of the plan had been, whether additional measures had been taken to eliminate trafficking in persons and what specific measures had been taken to protect children from sexual exploitation. It would also be helpful to have further information on the prosecution of trafficking cases, including examples of the sentences handed down to traffickers. With regard to trafficking victims, he wished to know whether the Government had established a specific protection mechanism that provided them with, for example, housing or financial assistance.

43. International cooperation was vital to promoting safe and healthy living conditions for migrant workers, as well as to preventing and eliminating clandestine labour migration. In that context, he requested information on measures taken by Jamaica in cooperation with other countries, particularly member States of the Caribbean Community, including any bilateral agreements concluded between Jamaica and countries that received Jamaican migrant workers, to ensure that such workers enjoyed safe working conditions and were able to meet their socioeconomic and cultural needs.

44. **Ms. Gordon** (Jamaica) said that the Government had engaged in preliminary discussions on granting the right to vote to Jamaican nationals who resided abroad. With regard to private employment agencies, there were approximately 50 overseas employment agencies operating in Jamaica which covered, inter alia, student employment, work in seasonal hotel programmes and on cruise ships, and work in Canada and the United States. Inspections of employment agencies were conducted on a quarterly basis and included interviews with agency staff and examinations of financial records.

45. In the past, the Government had not supported the practice of retaining a share of migrant workers' remittances; information regarding its current position on that question would be transmitted to the Committee in due course. The Government had, however, traditionally provided assistance to workers by sending their remittances through the central bank to private family bank accounts.

46. Under the Trafficking in Persons (Prevention, Suppression and Punishment) Act, which placed particular emphasis on women and children, the Government was required to protect and assist victims of trafficking, facilitate the investigation of cases and promote international cooperation in preventing trafficking and punishing offenders. Measures taken to implement the Act had included increasing the number of police raids in strategic locations and ensuring that training on the subject was provided to judicial personnel and police officers on an ongoing basis. Since the Act had come into force, a conviction had been handed down in four cases; of those, two had resulted in a custodial sentence and two in a fine of over 4 million Jamaican dollars. Restitution orders in favour of the victims had been issued in the same proceedings. Specialized units for investigating trafficking had been set up within the police force and the Office of the Director of Public Prosecutions. In several cases, the work of those units had resulted in the rescue of child victims of trafficking and in the initiation of judicial proceedings.

47. In addition, information on trafficking in persons had been included in police guidelines on safety and security, which contained definitions of key terms and a description of relevant protocols. The issue of human trafficking would be included in the international migration development policy, which was aimed at strengthening transnational cooperation, promoting compliance with international and national laws and conventions, and strengthening and implementing data information systems.

48. In order to protect the victims of trafficking, the Government provided relevant legal and medical services, such as counselling and psychosocial services, court orientation and accompaniment, home visitation, and specialized individual and group support. It also provided accommodation and had set up a shelter specifically for female victims. Through the Child Development Agency and the police force, child victims also received welfare services at authorized shelters, as well as medical assistance and educational support.

49. Regarding the reintegration of victims of trafficking, there was ongoing collaboration between non-governmental organizations and other stakeholders to provide training in practical skills and to offer opportunities for educational and personal development. The Theodora Project, for example, provided training and counselling to female victims of trafficking and organized educational assessments for young people. The Government also provided financial support for the education of victims.

The meeting rose at 6 p.m.